

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALAN C. LEE,

Defendant.

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Case No. 2:16-cv-35-RLJ-CRW

**DEFENDANT’S RESPONSE TO THE PLAINTIFF’S MOTION TO SHOW CAUSE FOR
FAILURE TO COMPLY WITH INSTALLMENT PAYMENT ORDER [DOC. 54]**

Defendant respectfully submits this response to the Plaintiff’s Motion to Show Cause for Failure to Comply with Installment Payment Order (hereinafter “Motion”). **See Doc. 54.**

ARGUMENT

As stated in the Court’s Memorandum and Order dated July 2, 2020 (hereinafter “Court’s Order”) [See **Doc. 44, p. 12**]:

The party seeking civil contempt must establish by clear and convincing evidence that the alleged contemnor has violated the Court’s prior orders. *Harrison v. Metro. Gov’t of Nashville and Davidson Cnty.*, 80 F.3d 1107, 1112 (6th Cir. 1996) (overruled on other grounds). Moreover, the party seeking civil contempt must establish by clear and convincing evidence that the alleged contemnor had knowledge of the order and the order was specific and definite. *Glover v. Johnson*, 138 F.3d 229, 244 (6th Cir. 1998).¹

The Court’s Order also stated that:

Once the party seeking civil contempt has made these three showings, it has established a *prima facie* case, and the burden shifts to the alleged contemnor to defend the contempt allegation by bringing forth evidence demonstrating “that he

¹These same elements were also stated in the Plaintiff’s Motion from a more recent Sixth Circuit Court of Appeals case. **See Doc. 54, p. 2.**

is presently unable to comply with the court's order." *Elec. Workers Pension Tr. Fund*, 340 F.3d 373, 379 (6th Cir. 2003). **Id.**

In support of evidence demonstrating that I am presently unable to comply with the Court's Orders requiring the \$2,000.00 a month payment to the Internal Revenue Service (hereinafter "IRS"), I have already provided the Court with the following information, but will provide it again to keep the response evidence all together for the Court:

1. My Quarterly Declaration filed on September 15, 2021 in accordance with the Court's Orders informed the Court that:

In response to my ankle being broken in early April of this year, which resulted in surgery [and] over 4 months of physical therapy rehabilitation, which I was just released from last week, my income has been decreasing and I have not been able to make the \$2,000.00 monthly payments to the Internal Revenue Service (hereinafter "IRS") for June, July, and August, 2021.

In response to an email from Mr. Bishop on July 6, 2021, I informed him of my medical problem which decreased my income, and told him that I continued paying the \$2,000.00 a month as long as I could, for April and May, 2021, and would continue paying it again if my income increases enough, which it has not, and, also informed him that I had incurred more expenses when I had to hire a law firm to represent me in defending a Petition for Discipline brought by the state bar because of the Order entered as a result of the Motion for Show Cause that was filed, and expect to be disbarred or have license suspended in the next few months.

On July 20, 2021, I informed Mr. Bishop by email that I thought the settlement of a couple of cases would allow me to make the June and July, 2021 payments in the next few weeks, but by the time I received the settlement funds to help with those payments, I realized, in response to the Court Filings, I needed to use the funds for payment of my quarterly estimated tax payments on September 15, 2021.

On September 9, 2021, I informed Mr. Bishop by email that I was hoping to catch up the payments due for June, July, and August 2021 by now, but I would need to use the funds I have to make the quarterly payment for 2021 that are due, and that I would file something with the Court regarding my reduction in income in the last few months, and will file something in the next few days requesting that I not be required to pay the \$2,000.00 monthly payments since I can no longer afford them at this time and likely will not be able to in the future as I anticipate my law license being suspended in the next few months.

See Doc. 52, pp. 2-3, ¶¶ 5-8.

2. My Quarterly Declaration filed on December 13, 2021 in accordance with the Court's

Orders informed the Court that:

As stated in my Quarterly Declaration dated September 15, 2021 [See Doc. 52], I was not able to make the \$2,000.00 monthly payments to the Internal Revenue Service (hereinafter "IRS") for June, July, and August, 2021 due to my ankle being broken in early April of this year, which resulted in surgery and 4 months of physical therapy rehabilitation which ended in September 2021, as I explained to the Court in my filing and to Mr. Bishop via my filing and emails in July and September 2021. See Doc. 52, ¶¶ 5-8.

Also, as stated in my September 15, 2021 Quarterly Declaration [See Doc. 52, ¶ 8], I planned on filing a request with the Court within a few days after the September 15, 2021 Quarterly Declaration was filed to request that I not be required to pay the \$2,000.00 monthly payments since I can no longer afford to pay them, but the status of my law license being suspended did not happen as quickly as anticipated.

An agreement was finally reached last Friday, December 10, 2021, with Disciplinary Counsel for suspension of my law license for three (3) years, which is much longer than I was initially informed and anticipated it would be.

The agreement still has to be accepted by the hearing panel, the Board of Professional Responsibility, and the Supreme Court of Tennessee before it goes into effect, which I have been advised should occur within the next month.

Due to the anticipated suspension over the last few months, I have not taken on any new cases as my practice involves cases where I am not compensated in advance by my clients and which are not settled quickly as they typically involve cases brought against defendants in Federal Court for consumer protection violations, resulting in my income being reduced even more in the last few months so it has not been possible to attempt to catch up the \$2,000.00 payments due for June, July, and August 2021 or make the \$2,000.00 monthly payments to the IRS for September, October, November, and December 2021 as well, and with my license being suspended I will not be able to earn enough income to make these monthly payments to the IRS and anticipate difficulty in paying monthly living expenses.

Based on this information I have provided to the Court and Plaintiff due to my reduction in income this year and which will continue to be reduced in the future, I would respectfully request the Court not require me to pay the past \$2,000.00 monthly payments due for June 2021 through December 2021 or future \$2,000.00 monthly payments, as I simply have not had and will not have the income to do so.

See Doc. 53, pp. 2-3, ¶¶ 5-10.

In addition to the information already provided, I further respond to the Motion, as follows:

1. I do not believe “a full and complete accounting of his financial information, transactions, assets, liabilities, expenses, and income for the past twenty-four months” as requested by the Plaintiff [**See Doc. 55, p. 4**] is necessary, as I made the payments as long as I could, which evidence was provided to the Court in the Quarterly Declarations required by the Court and already informed the Court and Plaintiff’s counsel in the last several months what changed with my financial situation due to medical problems and also due to the pending suspension of my law license, which occurred because of the Plaintiff’s numerous motions, including the Motion for an Installment Payment [**Doc. 22**] and the first Motion to Show Cause and Modify the Injunction and Memorandum [**See Docs. 23 and 25**], that were served at an incorrect address as determined by the Court in the Memorandum and Order dated July 2, 2020 [**See Doc. 44, p. 5, fn. 1**], after a Waiver of Service was filed with my correct address [**See Doc. 3**].² It’s impossible for me to recover money already spent for total living expenses, business expenses, and estimated tax payments (hereinafter referred to as “regular expenses”) in order to catch up the payments I have not been able to make due to what has happened, so looking back at everything for the last 2 years would not be helpful as to what I will be able to do now. I incurred substantial medical debts, \$20,000.00+, that I need to pay and also incurred substantial credit card debt and personal loans, \$17,000.00+, in the last several months just to help pay my regular expenses.

2. I have just now realized where the Plaintiff came up with the \$2,000.00 a month figure to start with, which was included in the Motion for an Installment Payment [**Doc. 22**] and the first Motion to Show Cause and Modify the Injunction and Memorandum [**See Docs. 23 and 25**]

²Fortunately, I now receive notice of filings electronically because the Plaintiff’s Motion and Memorandum [**Docs. 54 and 55**] were certified to have been sent to the same address I have not lived at for over 6 years.

(hereinafter referred to as “collective motions”) that I was not served and not able to respond to timely because of the Plaintiff failing to properly serve them. If I had been able to do so, then the \$2,000.00 per month payment likely would not be an issue. The Plaintiff has repeated this argument in the current Motion, so I will respond now, as follows:

First, the budget I filed with the Bankruptcy Court (it is actually **Doc. 22-5, pp. 50-55, not Doc. 22-1**), was an estimate based on my tax returns for the years 2016 and 2017, which showed gross incomes from my practice of \$143,950.00 and \$115,633.00, for 2016 and 2017, respectfully, and adjusted gross incomes of \$87,186.00 and \$68,114.00, for 2016 and 2017, respectfully. I assumed the gross income from my practice would remain close to the same, but it dropped dramatically in 2018 and 2019, to \$78,658.00 and \$77,290.00, respectively, resulting in adjusted gross income for 2018 and 2019 in the amount of \$23,501.00 and \$22,267.00, respectively. **Redacted copies of the 2018 and 2019 IRS tax account information showing the tax return information and payments made are attached as exhibits 1 and 2 to this response.**³

Next, the amount in the budget filed with the Bankruptcy Court for the \$3,250.00 per month in income tax payments was: (1) the amount of \$2,250.00 monthly, for the estimated tax payments on the anticipated \$7,500.00 per month net income (not for an amount owed on the judgment), which would be 30% of the net income for income taxes and self-employment taxes (approximate amount to be owed on that income level at that time), and (2) the amount of \$1,000.00 monthly for taxes for the years 2014-2017, which I understood were not dischargeable and planned on paying if I had the income necessary to do so. So based on that estimated budget, which did not happen as shown by the

³Also attached as **exhibit 3 to this response is a redacted copy of the IRS’s 2020 tax return account information** which shows that the return was filed and the estimated taxes and payment with the return have been made, but the IRS has still not processed the return, supposedly due to its backlog related to the Covid pandemic.

large reduction in income in 2018 and 2019, there would have not been \$2,000.00 left over monthly to pay the IRS on the judgment as the Plaintiff stated in its collective motions was available to do so.

Finally, with the reduction in income over the last several months because of the pending law license suspension and medical problems, I searched for other income sources to try and remain at the same level of income, or close to it, so I could continue making the payment pursuant to the Court's Orders, but due to: (a) my inability to work in any field related to the practice of law, which, until last year, is the only area I worked in for the last 34+ years, (b) my age, and (c) the injury to my ankle that is still in recovery, I have not been able to find any work that would pay anywhere close to what I was earning from my law practice. During the past year, I found a job not related to the practice of law, which is working for companies that hire persons to shop and deliver grocery/pharmacy items to customers that I started doing in February 2021 but had to stop doing for 3+ months starting in April 2021 because of my ankle injury. If that had not happened, I should have been able to continue making the \$2,000.00 monthly payments to the IRS, even with the income from my law practice being reduced, but not having that income, and due to the ankle injury, I incurred debt in addition to the medical debt, for credit cards and a personal loan, so I could continue paying my regular expenses. After the injury occurred and due to the reduction in income from my law practice, I have used my actual income to pay the additional debts incurred along with my regular expenses.

The other type of work allows me to basically choose the time to work (approximately 45-50 hours a week, including work and travel time) which helped in case something related to my law practice became necessary to do, although that has not happened a lot lately. My gross income from these sources averaged approximately \$3,200.00 per month (\$15.00 per hour) for the approximate eight (8) months I did it last year, which is an hourly rate higher than other potential work I found available. But, with the cost from using my vehicle for this type of work, which the IRS mileage

deduction states is for depreciation, gas, oil, tires, repairs, tune-ups, insurance, registration fees, etc., and expenses for supplies (grocery bags, etc.) and utilities/telephone, it leaves monthly net income of approximately \$1,500.00 from this source, matching closely to the take home amount from a \$12.00/hour, 40 hours a week job (which is the highest I found when searching for other sources), after tax, insurance, etc. deductions. Also, based on my age, and in attempt to have enough income to cover my regular expenses I have applied for Social Security retirement (but am not receiving it), which should be approximately \$2,000.00 a month based on information I obtained from the Social Security Administration. This amount can be reduced 15% by the IRS to pay on back taxes, reducing my income even more, but this may be the best and easiest way to insure that the IRS will receive a monthly payment on any owed back taxes until I no longer receive Social Security benefits. But, when receiving Social Security retirement benefits until I reach my full retirement age, which will be a little over four (4) more years from now (March 2026), my other income has to be limited to a certain amount anyway or the Social Security benefits will be reduced (which would also reduce the 15% payment to the IRS on the back taxes). To show the anticipated regular monthly expenses, I have attached as **exhibit 4 to this response** a budget to show my estimated monthly income and expenses in the Form 433-A, Section 5 format. For breakdown purposes, I am providing the following information regarding the expenses:

A. Line 35 (\$1,200.00) includes \$500.00 for food, clothing, housekeeping supplies, and personal care products (all which continue to increase), \$300.00 for minimum credit card payments (for at least 3 years), and \$400.00 for a personal loan (for 4 years);

B. Line 36 (\$1,355.00) includes \$1,165.00 for rent and rental insurance (this will occur in March 2022 as a reduction from my current rent and rental insurance expense of \$1,311.00), and \$190.00 for utilities (electric - \$70.00, water - \$50.00, and internet - \$70.00);

- C. Line 37 (\$494.00) for vehicle payment;
- D. Line 40 (\$50.00) for health insurance (medical, dental and vision);
- E. Line 41 (\$300.00) for health care costs, which includes \$50.00 for eyecare, dental, etc., and \$250.00 to pay on medical debts incurred; and
- F. Line 45 (\$150.00) for estimated income taxes as it will be much less due to the reduction and sources of income.

This budget does not show the anticipated reduction in income based on the IRS receiving 15% of the Social Security retirement benefits for payment towards back taxes. If that occurs, then I will have to figure out how to reduce other expenses.

3. Regarding the Plaintiff's request that I also be required to sell any assets to meet my unpaid obligations, I would note that my bankruptcy case filed in 2018 was closed as a no-asset case after review by the Bankruptcy Trustee for almost eighteen (18) months after it was filed, and since the bankruptcy case was filed the only additional assets I have acquired are a few household items, specifically, a bed and mattress, couch and tables, kitchen table and chairs, desk and chair, and television, all of which are normal items, and a 2020 Toyota RAV4 XLE with 43,000+ miles and \$24,000.00 payoff balance, all that would have very little, if any, re-sale value.

CONCLUSION

Based on the rights, as cited by the Court, that I have to provide evidence demonstrating I am presently unable to comply with the Court's Order requiring the \$2,000.00 monthly payment to the IRS [See Doc. 44], which I have provided in detail in this response, and due to the fact that I have no assets I can sale with much, if any, value, I would respectfully request that I not be held in contempt because the evidence clearly shows that I am presently unable to comply with the Court's Order regarding the monthly payment to the IRS due to my reduction in income.

01/13/22

Respectfully submitted,

s/ Alan C. Lee
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CERTIFICATE OF SERVICE

I hereby certify this 13th day of January 2022 a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

s/ Alan C. Lee
Alan C. Lee